

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 2754

INTRODUCER: Community Affairs Committee, Senator Fasano, and others

SUBJECT: East Lake Tarpon Community/Pinellas County

DATE: April 14, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill provides that, notwithstanding any other provision of law, a Pinellas County municipality may not annex unincorporated territory situated within the defined boundaries of the East Lake Tarpon Community following the effective date of the act unless the annexation of the entire community is approved by a majority vote of resident electors. The Committee Substitute (CS) does not prohibit voluntary annexations.

This bill creates an undesignated section of the Laws of Florida.

II. Present Situation:

Constitutional/Statutory Provisions Relating to Annexation¹

Section 2 (c), of Art. VIII of the State Constitution provides that “[m]unicipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.” This provision authorizes the

¹ The term “annexation” is defined in the Florida Statutes to mean “the adding of real property to the boundaries of an incorporated municipality, such addition making such real property in every way a part of the municipality.” See s. 171.031(1), F.S.

Legislature to annex unincorporated property into a municipality by special act.² It also authorizes the Legislature to establish procedures in general law for the annexation of property.

The Legislature established local annexation procedures by general law in 1974, with the enactment of ch. 171, F. S., the “Municipal Annexation or Contraction Act.” Chapter 171, F. S., describes the ways that property can be annexed or deannexed by cities without passage of an act by the Legislature. In 2006, this chapter was expanded to provide an alternative process for annexation that allows counties and municipalities to jointly determine how services are provided to residents and property.³

Types of Annexations

Voluntary Annexation

Unless a county charter provides otherwise, the property owners of a reasonably compact, unincorporated area desiring annexation into a contiguous municipality can initiate voluntary annexation proceedings. Section 171.044 (4), F.S., provides that the procedures for voluntary annexation are “supplemental to any other procedure provided by general law or special law.” The following process governs voluntary annexations in every county, except for those counties with charters providing an exclusive method for municipal annexation:⁴

- submission of a petition—signed by all property owners in the area proposed to be annexed—to the municipal governing body; and
- adoption of an ordinance by the governing body of the municipality to annex the property after publication of a notice—which sets forth the proposed ordinance in full—at least once a week for two consecutive weeks.

The governing body of the municipality also must provide a copy of the notice to the board of county commissioners of the county where the municipality is located. In addition, the annexation must not create enclaves.⁵

The Pinellas County charter has incorporated by reference certain charter provisions that provide “the exclusive method and criteria for voluntary municipal annexation and planning areas that delineate the geographic area eligible for annexation by a municipality.”⁶ The annexation provisions of s. 171.044(4), F.S., do not apply where the local government charter provides the exclusive method of voluntary annexation.⁷ Pinellas County has created planning areas.

² Miami-Dade County, however, has exclusive jurisdiction over its municipal annexations under ss. 11(1)(c), (5) and (6), Art. VIII of the 1885 State Constitution, as adopted by reference in s. 6(e), Art. VIII of the State Constitution.

³ See part II of ch. 171, F.S., the “Interlocal Service Boundary Agreement Act.”

⁴ Pursuant to Sec. 2.07 of the Pinellas County Charter, the county has established an exclusive manner of voluntary annexation in Article VII of its ordinances.

⁵ An enclave is: (a) any unincorporated, improved or developed area that is enclosed within and bounded on all sides by a single municipality; or (b) any unincorporated, improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality. Section 171.031(13), F.S.

⁶ Pinellas County Home Rule Charter s. 2.07, incorporating Ordin. No. 00-66, s. 3, 8-22-00; codified in the Pinellas County Ordinances part II, ch. 2, ss. 2-601-612.

⁷ *Pinellas County v. City of Largo*, 964 So.2d 847 (Fla. 2d DCA 2007) (reviewing Pinellas County’s annexation procedures and concluding that Pinellas County’s charter provided for the exclusive method of voluntary annexation); see also *Village of*

The purpose of each planning area is to allow the respective municipalities to consider the area in their comprehensive plan and delineate the geographic area eligible for annexation to each such municipality. Each planning area was determined and delineated consistent with the purpose and provision for establishment of planning areas, as provided for under F.S. § 163.3171 and is specifically intended to replace the review for ability to serve for annexations of ten acres or more now conducted independently by the council under Chapter 88-464, Laws of Florida.⁸

Additionally, the ordinances provide provisions governing petitions for voluntary annexation, council review of annexations, the procedure for appeals of annexations, and the effect of annexations. The ordinances encourage interlocal agreements for the provision of services. Finally, the ordinances provide that the county's voluntary annexation process shall be deemed to comply with and satisfy the requirements of s. 163.3171, F.S., which governs the county's authority over unincorporated areas and municipalities for comprehensive planning purposes.⁹

Involuntary Annexation

A municipality may annex property where the property owners have not petitioned for annexation pursuant to s. 171.0413, F. S. This process is referred to as "involuntary" annexation. In general, the requirements for an involuntary annexation are:

- the adoption of an annexation ordinance by the annexing municipality's governing body;
- at least two advertised public hearings held by the governing body of the municipality prior to the adoption of the ordinance, with the first hearing on a weekday at least seven days after the first advertisement and the second hearing held on a weekday at least five days after the first advertisement;¹⁰ and
- submission of the ordinance to a vote of the registered electors of the area proposed for annexation once the governing body has adopted the ordinance.¹¹

Any parcel of land which is owned by one individual, corporation or legal entity, or owned collectively by one or more individuals, corporations or legal entities, proposed to be annexed cannot be severed, separated, divided or partitioned by the provisions of the ordinance, unless the owner of such property waives this requirement.

Wellington v. Palm Beach County, 941 So.2d 595 (Fla. 4th DCA 2006); *City of Sweetwater v. Dade County*, 343 So.2d 953 (Fla. 3d DCA 1977).

⁸ Pinellas County Ordinances part II, ch. 2, s. 2-605.

⁹ *Id.*

¹⁰ This new requirement was passed by the 1999 Legislature.

¹¹ In 1999, the Florida Legislature removed the requirement of a dual referendum in specific circumstances. Previously, in addition to a vote by the electors in the proposed annexed area, the annexation ordinance was submitted to a separate vote of the registered electors of the annexing municipality if the total area annexed by a municipality during any one calendar year period cumulatively exceeded more than five percent of the total land area of the municipality or cumulatively exceeded more than five percent of the municipal population. The holding of a dual referendum is now at the discretion of the governing body of the annexing municipality.

If there is a majority vote in favor of annexation in the area proposed to be annexed, the area becomes part of the city. If there is no majority vote, the area cannot be made the subject of another annexation proposal for two years from the date of the referendum.

If more than 70 percent of the land in an area proposed to be annexed is owned by individuals, corporations or legal entities which are not registered electors of such area, the area cannot be annexed unless the owners of more than 50 percent of the land in such area consent to the annexation. This consent must be obtained by the parties proposing the annexation prior to the referendum.

If the area proposed to be annexed does not have any registered electors on the date the ordinance is finally adopted, a vote of electors of the area proposed to be annexed is not required. The area may not be annexed unless the owners of more than 50 percent of the parcels of land in the area proposed to be annexed consent to the annexation. If the governing body does not choose to hold a referendum of the annexing municipality, then the property owner consents must be obtained by the parties proposing the annexation prior to the final adoption of the ordinance.

East Lake Tarpon Community

The East Lake Tarpon Community is in northeast Pinellas County. The community is surrounded on three sides by a lake and the county lines of Pasco and Hillsborough Counties. East Lake Tarpon was developed as a predominantly residential community, with most of the residents residing within the deed-restricted communities of the East Lake Tarpon area. The residents of East Lake Tarpon are developing a common vision of East Lake Tarpon's future as a family oriented, residential, scenic community where small businesses and commercial uses serve to complement and support area residents. The community is working with Pinellas County to adopt an East Lake Tarpon Community Overlay within the Pinellas County Comprehensive Plan that reflects the community's vision. The residents of the East Lake Tarpon Community pay ad valorem taxes to support and receive fire control services from the East Lake Tarpon Fire Control District.¹² From 2003 to 2007 the Laws of Florida were revised to explicitly provide that if any municipality or other fire control district annexes land within the district's boundaries, the district would continue as the sole taxing, enforcing, and service providing authority for fire control purposes to the annexed land. The law permitted municipalities to collect the applicable tax, or assessment for fire services, and remit it to the district, at the district's annually adopted standard rate.¹³

III. Effect of Proposed Changes:

The bill contains several whereas clauses describing the East Lake Tarpon Community within Pinellas County.

Section 1 of the CS provides that a municipality within Pinellas County may not annex any unincorporated territory within the East Lake Tarpon Community following the effective date of this act unless the annexation of all of the territory within the boundaries of the East Lake Tarpon

¹² Ch. 2003-336, Laws of Florida.

¹³ Ch. 2000-477, Laws of Florida, as amended by ch. 2003-336, Laws of Florida.

Community are approved by a majority vote of the electors of the East Lake Tarpon Community voting in a referendum.

Section 2 provides a legal description of the boundaries of the East Lake Tarpon Community.

Section 3 provides that nothing in this act shall prohibit any voluntary annexation.

Section 4 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Local Bill

This CS is a local law. A special or local law is a law:

relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the state, or one that purports to operate within classified territory when classification is not permissible or the classification adopted is illegal.¹⁴

Article 3, section 10 of the Florida Constitution provides:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

Notice was published on January 31, 2010, in the *St. Petersburg Times* in compliance with s. 11.03, F.S., governing publication of local laws.

¹⁴ *Lawnwood Medical Center Inc. v. Seeger, M.D.*, 990 So.2d 503 (Fla. 2008).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill makes it more difficult for cities to annex, which will make it more difficult for the cities to increase their ad valorem revenue by incorporating valuable lands. Conversely, fewer lands will be annexed from the fire district, which means its ad valorem base is less likely to decrease.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs on April 14, 2010:**

Makes the CS effective following the effective date of the act;
Clarifies that the CS does not prohibit voluntary annexations.

B. Amendments:

None.